

Title IV-E Reimbursement for Child Welfare Legal Services Program Description

Introduction

This document explains the requirements for counties to claim federal Title IV-E funds for legal services in child welfare cases. This program, as implemented by the Department of Health and Family Services (DHFS), provides funding to enhance child protection and permanence. DHFS will make IV-E funds available to counties that have written agreements with the District Attorney (DA), Corporation Counsel (CC), or private legal service providers to increase the amount of legal staff and services available to process child welfare cases. “Legal services” are activities performed by attorneys, paralegals, investigators, and clerical or other staff on behalf of the county child welfare agency, in accordance with professional legal judgment, pertaining to children who have been abused or neglected or placed in out-of-home care or children at risk of placement in out-of-home care under Ch. 48, Stats., including pursuing terminations of parental rights and otherwise assisting children in achieving permanence.

Counties can apply to participate in the Title IV-E legal services reimbursement program by submitting a plan and budget to DHFS. The application must include a proposed budget, a description of the planned activities, and an agreement between the human/social services department and the DA, CC, or private provider describing what services will be provided and the manner in which they will be provided. Once proposals are approved, DHFS will issue a state/county contract addendum to county human/social service departments, which may subcontract for legal services. The DHFS pass-through contract will continue in subsequent years, based on updated annual budgets.

If DA/CC legal services costs will be used as match or claimed for IV-E reimbursement, the county department must determine, in consultation with the DA/CC, how the IV-E reimbursement will be used. Legal staff whose time is used as match or who are funded with IV-E funds must have an acceptable method of time reporting to support the costs under the IV-E contract. If additional positions will be created, the DA or CC office is responsible for obtaining any additional position authority needed. If all child welfare legal services are delivered by a private provider, an agreement with the DA or CC office is not necessary.

The county human/social services department must provide assurances that the IV-E reimbursement will be used to expand legal services and that the IV-E funds will not be used to supplant existing legal services expenditures. Assurances must also be provided that appropriate methods are used to determine allowable costs for the legal services reimbursement program.

Claiming Match for IV-E Reimbursement

To qualify for IV-E administrative reimbursement, any legal staff time being claimed or used for match must be dedicated to working on child welfare cases and must be related to IV-E reimbursable costs. This includes legal staff dedicated either full- or part-time to child welfare cases. Counties participating in the legal services reimbursement program must use an appropriate method to determine the amount of staff and other costs that can be directly charged to Title IV-E.

To avoid any double claiming of IV-E reimbursement, fiscal reporting lines have been established in CARS to ensure that legal services costs claimed for IV-E reimbursement by counties are not included in the administrative costs claimed by DHFS at the state level. Costs used by counties to claim legal services reimbursement must be excluded from existing CARS lines used by DHFS to

claim IV-E reimbursement for county administrative costs. Counties are responsible for maintaining documentation that costs directly charged to the legal services reimbursement program meet federal requirements for direct charging costs to federal funding sources.

Under the Title IV-E legal services reimbursement program, expenditures for legal services made with non-federal funds may be used as match to claim federal IV-E funds. DHFS claims IV-E reimbursement based on expenditures reported by counties and passes through the IV-E reimbursement to counties. County expenditures for match may include legal services costs that are existing or new. **Reimbursement received by counties must be used to improve or expand legal services for child welfare cases.** The agreement between the child welfare agency and the DA, CC, or private provider must specify the legal services activities that will be performed under the reimbursement program. In determining the level of match, counties may either use the previous year's costs or the average of the previous three years' costs.

Amount of IV-E Reimbursement

Title IV-E funds are earned on a reimbursement basis, so costs must first be incurred at the county level. There will be no prepayments through the CARS system. The amount of reimbursement is based on the actual amount of reimbursable costs, including match expenses, so the exact amount of IV-E that a county can receive will depend on local expenditures for legal services. Counties are advised to budget based on their best estimates of expenditures and report all applicable match expenses to maximize their IV-E reimbursement. If the amount of reimbursable costs exceeds the initial projections for the year, the IV-E reimbursement limit can be increased by DCFS through a contract amendment, providing there is sufficient match. If the reimbursable costs are less than the initial projections, the IV-E reimbursement will be reduced appropriately.

The net amount of IV-E reimbursement for legal services is based on the federal IV-E administrative cost reimbursement rate of 50% multiplied by the percentage of IV-E eligible children in out-of-home care in Wisconsin. This eligibility ratio is also known as the IV-E "penetration rate" and varies from year to year. **For legal services related to CHIPs proceedings and out-of-home care (OHC), the net IV-E reimbursement rate is 33%. For legal services related to TPR and adoption, the net rate is 40%.** The net reimbursement rate could change in future years, depending on trends in the statewide IV-E penetration rate and changes in federal IV-E fiscal policy. If the IV-E legal services reimbursement rates will be changing for the next contract year, DHFS will give counties advance notice. The amount of reimbursement provided during a contract year will remain fixed at the applicable rate, with adjustments to the net reimbursement rate made as necessary for subsequent contract years.

Example 1: A county currently has an attorney devoted to allowable child welfare legal services at an annual cost of \$100,000. The county hires a paralegal position at an annual cost of \$50,000. If these staff spend 100% of their time on CHIPs/OHC at a reimbursement rate of 33%, for the total \$150,000 of allowable costs, the county will earn \$50,000 (33%) of IV-E reimbursement. Thus, the existing \$100,000 of legal services expenditures can be used to leverage IV-E reimbursement to support the new paralegal position.

Example 2: The county attorney and new paralegal spend 80% of their time devoted to CHIPs/OHC and 20% to TPR/adoption. The \$150,000 of costs would generate IV-E revenue as follows:

80% = \$120,000 x 33% = \$40,000 of IV-E
20% = \$30,000 x 40% = \$12,000 of IV-E
Total IV-E reimbursement = \$52,000

For fiscal reporting in CARS, separate lines are used to report expenses for CHIPS/OHC activity and activity related to TPR and adoption. Based on the fiscal reporting in CARS, DCFS may compute a "blended" reimbursement rate for the IV-E legal services reimbursement program. If so, counties will be notified prior to next contract year.

Allowable Child Welfare Legal Services

For purposes of the IV-E legal services reimbursement program, the following types of legal services may be used in determining the amount of legal staff time and other expenses qualifying for IV-E reimbursement. While counties may have a broader definition of child welfare cases for local program purposes, the IV-E legal services reimbursement program is limited to the following activities:

- Initial disposition and extension or revision of CHIPS orders;
- Placement of children in out-of-home care, including temporary physical custody, change of placement, revision, and extension orders;
- Voluntary placements of children into out-of-home care and conversion of voluntary placements to court-ordered placements;
- Termination of parental rights (TPR), including developing grounds for TPR and presenting TPR cases to the court;
- Finalizing adoptions for children in out-of-home care; and
- Establishing guardianship for children in out-of-home care under s. 48.977, Stats.

Within the broad types of legal services identified above, specific legal services may include: consulting with child welfare case managers; determining potential cases for court action; receiving and organizing information about cases; petitioning the court; court hearings on permanency plans; providing legal notice of hearings; issuing subpoenas; preparing legal briefs and orders; obtaining signed court orders; appellate activities; and related legal support of county child welfare agencies.

Legal services related to JIPS and Delinquency orders, juvenile probation, restitution, and placement of children in secure detention or juvenile corrections under Chapter 938, Stats., do not qualify for the legal services reimbursement program. Juvenile justice activities are generally not IV-E reimbursable. In situations where legal actions under Chapter 48, including TPR, adoption, permanency plan hearings, and guardianship, are performed for juveniles subject to a Delinquency or JIPS order, the legal actions under Chapter 48 do qualify for the legal services reimbursement program.

Criminal prosecution of persons charged with child abuse and neglect does not qualify for the IV-E reimbursement program. Attorneys who handle both criminal prosecutions and Children in Need of Protection or Services (CHIPS) petitions may only charge time associated with the CHIPS activity to the contract.

Legal Services Agreements

To participate in the legal services reimbursement program, county human/social service departments must enter into agreements with the DA, CC, or private provider. The agreement must define the amount of legal staff time and legal services devoted to child welfare cases and the responsibilities of each agency. The agreement must identify how the IV-E reimbursement

will be used to improve legal services for child welfare cases. A signed copy of the agreement must accompany the application to DHFS for IV-E reimbursement.

The agreement with the DA/CC should identify his or her responsibilities in providing legal services to the child welfare agency. Examples of provisions applicable to the DA/CC office that should be included in the agreement include:

1. Identify specific staff who will provide the child welfare legal services agreed upon by the child welfare agency and the DA/CC and identify the type of child welfare legal services to be provided.
2. Specify the method that will be used by the DA/CC to verify the amount of staff time spent on child welfare cases.
3. Represent the child welfare agency regarding children in out-of-home care in pursuing permanence in accordance with established permanence goals, as requested by the agency, and in accordance with professional legal judgment.
4. Promptly process requests for legal actions, prepare legal documents, and provide direction to child welfare agency staff regarding the preparation of legal documents.
5. Provide written explanations for denials or returns of child welfare agency requests and document the reasons for actions on cases, citing applicable law.
6. Consult with caseworkers and their supervisors on cases, provide testimony, and obtain court orders.
7. Attend child welfare agency meetings and training sessions to update caseworkers and supervisors on new laws or legal policies and procedures.
8. Manage requests for child welfare legal actions efficiently and within time frames agreed upon with the child welfare agency. If a backlog occurs, provide corrective action strategies to address the backlog.

The agreement must also identify the responsibilities of the child welfare agency in assisting the DA/CC in providing legal services. Examples of provisions applicable to the child welfare agency that must be included in the agreement include:

1. Provide legal staff with current case information, updated case files, available case data, and other necessary information prior to any filing or court dates.
2. Work closely with legal staff in preparation of cases to achieve goals specified by the child welfare agency and the court.
3. Assist legal staff in arranging and conducting interviews of witnesses, including arranging child care and performing any necessary follow-up activities.
4. Work closely with legal staff to prepare for court hearings and participate in pre-hearing meetings.
5. Meet requests for technical support made by legal staff in a timely manner.

The agreement must specify how DA/CC expenses will be reported to the county human/social services department and how reimbursement received by the human/social services department will be used by the DA/CC. Responsibility for fiscal record keeping must also be addressed in the agreement.

Legal Services Staff

The legal services reimbursement program can be used to support legal staff in DA or CC offices, legal staff based in the child welfare agency, or legal services purchased by the child welfare agency from private providers.

District Attorneys: Attorney positions are authorized at the state level by the Department of Administration (DOA). DA offices wishing to participate in the legal services reimbursement program should contact the State Prosecutors Office within DOA (contact information on Page 10). The State Prosecutors Office will work with DA offices to identify sources of match, establish fiscal management processes, and seek additional position authority.

Salary and fringe benefit costs for attorney positions are funded with state General Purpose Revenue (GPR). The GPR funding for attorney positions is budgeted on a state fiscal year (July 1 – June 30) basis, so counties that subcontract with their DAs office may need to do so on a state fiscal year basis. Costs for other staff, such as paralegals and clerical staff, are typically paid by the county, so the match for counties where the DA offices handle child welfare cases may include a mix of state GPR funds and county funds.

Corporation Counsel and Other County Legal Staff: Identification of match expenditures, fiscal management processes, and additional position authority must be addressed at the local level in accordance with county fiscal procedures. The legal services reimbursement program can also be used for legal staff based directly in the child welfare agency. If some legal staff are based in the child welfare agency, the actions of those staff must be addressed in the agreement with the DA/CC office to coordinate overall child welfare legal services.

Private Providers: If child welfare legal services are purchased by the county, the types of situations where services will be purchased must be identified in the county plan for the reimbursement program.

Under s. 48.09, Stats., county boards may have either DA offices or CC offices represent child welfare agencies. In the event that changes are considered to what child welfare matters are handled by the DA's office, the county must follow the notification procedure specified under s. 48.09(5), Stats.

Allowable Legal Services Costs

The following are examples of allowable costs for IV-E reimbursement:

- Salary and fringe benefit costs for attorneys and paralegals in DA or CC offices or child welfare agencies who work on child welfare cases.
- Costs for legal services for child welfare cases purchased from private providers.
- Salary and fringe benefits for investigators, witness coordinators, and related staff who work on child welfare cases.
- Salary and fringe benefits for clerical support staff preparing petitions, court orders, and other documents for child welfare cases.
- Costs associated with legal actions for child welfare cases including filing fees, costs for expert witnesses, and transcription costs.
- Costs for travel and training for legal staff who work on child welfare cases, including participating in child welfare training.
- Supplies and services necessary for legal staff who work on child welfare cases.
- Genetic testing to determine paternity to expedite a court case.

Note: No IV-E funds may be passed through to an agency without a legal services agreement in place.

Costs Not Allowed for Reimbursement Program

The IV-E reimbursement program does not apply to the costs of judges, clerks of courts, guardians ad litem, public defenders, or other court-related staff who may be involved in child welfare legal proceedings but who do not represent the child welfare agency. Only legal staff who represent the child welfare agency may be included in the legal services reimbursement program. Court operating expenses and overhead cannot be claimed under the Title IV-E legal services reimbursement program.

General administrative costs of DA/CC offices cannot be used as match for the legal services reimbursement program. Only staff time and other expenses that can be directly charged to Title IV-E can be included in the reimbursement program.

General county administrative or overhead (AMSO) costs cannot be used as match for the legal services reimbursement program. Under the approved IV-E cost allocation plan, general administrative costs must be allocated using the RMTS results.

Court fees and other fees paid by individuals involved in child welfare cases cannot be used as match for the legal services reimbursement program.

The purchase or rental of computers, other equipment, or vehicles also cannot be included in the legal services reimbursement program.

Allocation of Legal Staff Time

To meet federal requirements for directly charging costs to the Title IV-E legal services reimbursement program, legal staff and other legal services costs must be directly related to legal services for child welfare cases. Attorneys and other legal staff must be either dedicated full-time to child welfare cases or the specific portion of time for legal staff who work part-time on child welfare cases must be identified. County human/social service departments are responsible for working with their DA/CC office to ensure that the amount of legal staff time and other expenses charged to the legal services reimbursement program corresponds with the amount of legal services performed for child welfare cases.

In developing budgets for the IV-E reimbursement program, the amount of legal staff time included should be determined based on past experience with child welfare cases. For staff who are devoted less than 100% to child welfare legal actions under Chapter 48, the percentages of staff time devoted to Chapter 48 activities should be determined based on past experience and verified based on time reporting to ensure the percentages remain accurate.

Counties can determine the specific method used to allocate legal staff time and other expenses to the legal services reimbursement program. It is recommended that 100% time reporting be used for legal staff and time is tracked using time slips or other methods of time reporting. The time reporting method must be consistent with cost allocation methods used by the DA or CC office for other funding sources, including federal grants. County agencies are responsible for ensuring that the legal staff time allocation method used meets state single audit requirements and other applicable audit requirements.

Since IV-E funds are earned on a reimbursement basis in accordance with actual allowable expenditures, the time reporting results will determine what a county actually earns under the legal services reimbursement program. Counties are advised to make sure that their DA/CC

office: 1) understands that the amount of IV-E funds claimed will depend on actual allowable expenditures, and 2) budgets conservatively in hiring additional staff. If DA or CC offices overestimate the amount of IV-E funds they will receive through the county, the DA or CC office will create a budget deficit in their office.

Example: An attorney is budgeted at 50% for child welfare activities, but, based on the time reporting results; only 40% of the attorney's actual time was spent on reimbursable activities. For that year, only 40% of the attorney's cost can be claimed for the legal services reimbursement program. This will reduce the amount of IV-E reimbursement to support the cost of the attorney position.

Counties are also advised that funding legal staff with IV-E revenue could limit their flexibility to have those legal staff handle other types of cases. For example, if an attorney handles exclusively Chapter 48 legal actions, having the attorney handle any Chapter 938 legal actions would reduce the IV-E reimbursement to the county.

Sources of Match

The match expenses used to claim IV-E reimbursement must be from non-federal public funds and be based on expenditures by a public agency from those public funds. Expenses used to claim IV-E reimbursement for legal services cannot be used as match for other federal funding sources.

Counties receive various types of funds from the state and from local revenue sources. Local tax levy funds are acceptable as IV-E match. Community Aids funds received from DHFS contain state GPR and other sources which can be used as match. Agencies should refer to previous guidance from DHFS on the use of Community Aids funds to match federal sources.

Of funds distributed specifically for child welfare services by DHFS, the IV-E Incentive program funds can be used as match. Promoting Safe and Stable Families (PSSF) and Independent Living (IL) program funds are federal funds and cannot be used as IV-E match.

The match used to draw federal IV-E reimbursement can include new cash expenditures and existing expenditures for legal services. The legal services reimbursement program does not require additional county expenditures to draw IV-E funds, but if counties increase spending on legal services, the amount of IV-E reimbursement will increase proportionately.

DA offices should consult with the State Prosecutors Office regarding how DA funding from the state can be used as match for the legal services reimbursement program.

Applications to DHFS

The county human/social services department must apply to participate in the legal services reimbursement program. Applications must include 1) budget information, 2) a program description, and 3) a copy of the agreement between the county department and the legal services provider. Applications will not be approved by DHFS without a legal services agreement.

The budget sheet must identify the total amount of costs, the amount that will be claimed for IV-E reimbursement; and the amount and sources of match expenditures. The IV-E reimbursement is based on the total budget and will not be controlled by individual line items. The budget

information will be used by DHFS to set the IV-E reimbursement limit for the contract with the county. The amount of actual IV-E reimbursement will depend on the amount of allowable expenses reported to DHFS.

If the IV-E reimbursement will be used to increase the number of legal staff positions, the application must include an explanation of the actions needed to obtain position authority and an estimated time frame for hiring additional staff. DA offices should work with the State Prosecutors Office to obtain additional position authority through the s. 16.505, Stats., process.

The IV-E reimbursement must be used to expand child welfare legal services. The IV-E funds cannot be used to supplant existing county expenditures for legal services. The application must explain how the IV-E funds will be used to expand services.

Applications will be reviewed by the Bureau of Programs and Policies within the Division of Children and Family Services (DCFS) and by DHFS Area Administration regional offices. Additional information may be requested if questions arise about the applications submitted by counties.

Contracts

Once legal services reimbursement programs have been approved by the DCFS, counties will be issued an appendix to their state/county contract for the IV-E reimbursement. Once counties begin participating in the legal services reimbursement program, the contract will be issued annually by DCFS as part of the state/county contract. Updated budget sheets and program descriptions will be needed annually for contracts in subsequent years. Should the amount of legal services expenses in a year exceed the projected amount originally used for that year's contract, a contract modification will be needed to increase the reimbursement limit.

Contracts will be effective January 1 of the current calendar year, regardless of the date the county plan and budget are submitted. Allowable expenses for legal services already incurred are reimbursable on the effective date that the counties have agreements in place that meet the requirements for the legal services reimbursement program. No IV-E reimbursement can be provided for legal services until the agreement between the child welfare agency and the legal services provider has been finalized.

All reimbursement will be based on expenses reported to DHFS through the CARS system. Reimbursement will only be made for actual expenses incurred by counties and no contract advances will be made to counties for this program.

Since IV-E funds can only be claimed on a reimbursement basis, if counties do not claim the full amount authorized under their legal services contract, there is no "carryover" of unused IV-E pass-through funds to the next year.

Consortia

Counties may form consortia for purposes of the legal services reimbursement program. A single county can serve as the fiscal agent for a consortium. The county acting as the fiscal agent is responsible for submitting fiscal information for the contract, issuing subcontracts, and making fiscal arrangements with the other members of the consortium.

Consortia may be established for the full range of child welfare legal services or limited functions. In situations where legal services are handled through the consortium, each of the counties must be a party to the agreement with the legal services provider. If counties participate in a consortium for limited functions, they can have a separate legal service reimbursement contract for the individual county functions as well as participate in the consortium contract for the limited joint functions.

Multiple counties may work with a single DA office, CC office, or private legal services provider to fund legal staff to work with the multiple counties. An example is an attorney specializing in terminations of parental rights (TPR) who could work with multiple counties as TPR cases arose. If a single attorney works with multiple counties, however, steps may be necessary with courts to ensure the attorney is recognized to represent the child welfare agency in each of the counties in which the attorney will handle cases.

CARS Reporting

The CARS reporting requirement includes both reporting expenses for IV-E reimbursement and reporting expenses for DHFS administrative use.

For reimbursement purposes, CARS profiles 350, 351, and 352 have been established for the legal services reimbursement program. CARS profile 350 is used to report expenses related to CHIPS, out-of-home care, and other non-adoption activities. CARS profile 351 is used to report expenses related to TPR and adoption. CARS profile 352 is the reimbursement line based on the totals reported on profiles 350 and 351. The net IV-E reimbursement rate is 33% for CHIPS and OHC activities and 40% for TPR and adoption expenses.

Counties should not report any expenses used as match for the legal services reimbursement program on CARS lines 301, 682, or 683. These lines are for reporting purposes only and do not affect the amount of reimbursement from DHFS. The lines are used with the RMTS results to determine the amount of administrative expenses eligible for federal IV-E reimbursement. For reporting purposes, expenses used as legal services match should be included by counties on CARS line 561. This will prevent match expenses for legal services from being included by DHFS in the pool of local agency costs to which the RMTS results are applied.

Counties should retain their own documentation of costs used as legal services match for local audit purposes.

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